trade or occupation to suppress or remove such trade or occupation.

Under sections 93 and 94 of the Code, the Magistrate may in certain circumstances make the conditional order absolute, and give notice of the making of that absolute order to the person against whom the order has been made.

I must take it that the order made by the learned Magistrate is correctly represented by the terms of the notice of the 7th of July, 1931. That being so, the order of the Magistrate prohibits the appellant from making a noise by means of gramophones in the course of his trade. That is an order which the Magistrate had no power to make. His only power is to require the person carrying on the trade to suppress or remove that trade or occupation. The Magistrate has, therefore, exceeded his statutory powers, and I hold that the order is one which cannot be enforced against this appellant.

I cannot proceed to make any order dealing with that order absolute, because as the learned Deputy Legal Adviser has very properly pointed out, in the first place there is no appeal filed against that order, and in the next place the persons at whose instance that order was made are not now before the Court, and have not had an opportunity of being heard.

As to the merits, I have no doubt whatever that the persons who complained of the nuisance caused to them by the use of loud speakers and gramophones in close proximity to their offices may have a serious cause for complaint, but I do not express any opinion on the merits of their complaint, since I have myself decided that this order is not one which can properly be enforced against this appellant.

Some question arose during the argument as to what is the proper practice in such a case as this; and my view of the matter is that any person served with notice of the making of an order should appeal against that order, if he wishes to contend that the order should not have been made. That practice is contemplated by section 89 (*ii*), and it is the more convenient practice, because then the Court, which is to consider the matter, first of all has before it the record of the proceedings in the Magistrate's Court, and thus be accurately informed as to what happened, and in the next place the appellant could set out categorically his reasons for urging that the order should not have been made. It is not so convenient a practice for a person served with the order to wait until some action is taken to enforce the order, and if he then be convicted, to appeal against the conviction, for the simple reason that the record in the original proceedings is of course not then before the Judge who hears the appeal. At the same time, on an appeal against such a conviction, I am satisfied that the Court is cast with the duty of considering whether the order made is enforceable under section 188 of the Penal Code, and in this case, I am of opinion that it is not.

The appeal is, therefore, allowed and the conviction and sentence quashed.

Appeal allowed.

JOHORE.

[APPELLATE CIVIL JURISDICTION]

ANTHONY LUCAS
Plaintiff (Appellant)

vs.

THE MALAYAN CULTURES CO., LTD.
Defendants (Respondents)

[JOHORE CIVIL APPEAL No. 3 of 1932]

[BATU PAHAT CIVIL SUIT No. 28 of 1931]

Practice—costs awarded to a pauper—profit costs—taxation—appeal on question of law—Advocates and Solicitors Enactment (No. 16 of 1930) Ss. 28—35.

The plaintiff, who was admitted to sue as a pauper, was awarded costs of the action "to be taxed on the Supreme Court Scale." His Solicitor brought in a bill of costs which was taxed and allowed at $2,129.08 a considerably larger sum than the amount of the Judgment. The bill contained a number of items covering profit costs, which were allowed. The defendants' Solicitors applied to have the Registrar's taxation reviewed. The Judge reviewed the taxation and disallowed the items relating to profit costs. The plaintiff appealed against this decision. A preliminary objection was taken that no appeal could be lodged against an order relating to costs only.

Held, by the Court of Appeal (Murison, C.J., and Terrell, J.) dismissing the appeal, that, as the Order as to costs involved a question of law and principle, an appeal lay against the decision.

Held also, that no profit costs can be included in a bill of costs payable to a successful pauper litigant, in the absence of a special Order of the trial Judge to that effect.

Held further, that in no case can the amount at which a pauper's solicitors' bill is taxed exceed the amount of Judgment recovered.

Obiter, the law as expressed in Ss. 28—35, Advocates and Solicitors Enactment (No. 16 of 1930) should be amended in some clearly intelligible form.

Carson v. *Pickersgill*, (1895) 14 Q.B.D. 859, held not to apply in the State of Johore.

APPEAL from the Judgment of Burton, J., delivered on the review of the taxation of the plaintiff's Solicitor's bill of costs.

The issues raised in this appeal appear from the Judgment of Murison, C.J., below.

M. V. Pillai for the Appellant.

Chidson for the Respondents.

Cur. Ad. Vult.

On the 22nd of March, 1932, the Registrar of Supreme Court Johore Bahru, delivered the following grounds of decision:—

WEISS, Registrar.—The plaintiff, who was admitted to sue in *forma pauperis*, succeeded in recovering a judgment for a sum of money which would have disqualified him from the privileges

extended to a pauper if he had such sum at the time he sought to bring his action. The costs of the action were awarded to the plaintiff. No special application was made. They followed the event in the ordinary way.

At the outset of the taxation of the plaintiff's solicitor's bill, the defendants, by their solicitor, took objection to all items of "profit costs." He based his objection on the argument that the successful party should be reimbursed only to the extent of those charges which he has either paid or become liable to pay. He submitted that the taxation should proceed on the principle laid down in the case of *Carson* v. *Pickersgill* (14 Q.B.D. 859), and also referred to the decision of Stevens, J., in the recent case in the Colony of *Mahawan bin Sakjan* v. *Meera Hoosain*, reported in 1929 S.S.L.R. at page 189.

The plaintiff's solicitor took a contrary view, and invited me to follow neither of the aforesaid cases. He contended, as I understood his argument, that upon judgment being delivered in favour of the plaintiff, the plaintiff was no longer suing as a pauper, that he was *ipso facto* dispaupered, that a retrospective liability to reward his solicitor thereupon arose *quasi ex contractu*, and that an award of costs meant, and was in this case intended to mean and to operate as an indemnity for such liability.

In the State of Johore the law on the subject is to be found in Sections 31, 34 and 35 of the Advocates and Solicitors Enactment of 1930. These sections are modelled (except for the provisions as to pauper defendants) on sections 770, 774 and 775 of the Civil Procedure Code of the Colony, which sections fell to be the subject of judicial interpretation by Stevens, J., in the aforementioned case.

The reasons given by Stevens, J., for holding, as he did, that the case of *Carson* v. *Pickersgill* should not apply to the Colony appeared to me, having regard to section 35 of the Johore Enactment, to have equal force in the State of Johore. I felt therefore at liberty to depart from *Carson* v. *Pickersgill* and to construe section 34, not in the light of the interpretation in England of Rule 31 of the old English Order XVI, but in the light of our section 35, which, as Stevens, J. points out when referring to Section 775 of the Civil Procedure Code of the Colony, has no counterpart in the English Order.

In determining the meaning of Section 775, Stevens, J., says:—

> "I confess that the wording of Sec. 775(1) presents to my mind some difficulty. What is the meaning of the words, 'the costs allowed to his advocate and solicitor, if any are so allowed'?
>
> "Do they mean the costs ordinarily allowed by law? If so, I do not know what is meant by the words 'if any are so allowed,' because solicitors have always, I presume, been permitted to charge for their services. Or do they mean costs to be allowed by a Judge on a special application? I am disposed to think that is what is intended; though I fail to appreciate why the operation of this section should be limited to cases in which the pauper has been awarded costs under Section 774.
>
> "In my opinion, on the true construction of the provisions of our Code, a pauper to whom costs are awarded may recover such costs as an ordinary litigant may recover, namely, those which he can show himself to have paid or become liable to pay."

With the utmost respect to the learned Judge I find that I am unable to understand why the words "*if any are so allowed*" should mean costs allowed only on a special application. It appears to me more probable that the words "the costs allowed to his advocate and solicitor" are intended to mean those costs awarded to be paid to the pauper which are recoverable under the party and party scale in force for the time being; and that the words ("if any are so allowed") though perhaps tautologous, are inserted merely for the sake of clarity. It should be noticed that in section 775 of the Civil Procedure Code of the Colony these words are not in parenthesis as they are in Section 35 of the Johore Enactment.

Accordingly Section 35 did not appear to me to restrict the operation of Section 34 in the way that Section 775 was found in the Colony to limit the operation of section 774 to costs other than "profit" costs, which, I am told has been understood to be the meaning or at any rate the effect of the words "such costs as an ordinary litigant may recover, namely, those which he can show himself to have paid or become liable to pay."

I was influenced to some extent in arriving at this conclusion by the not illogical view put forward that a pauper is no longer suing as such when once a judgment has been pronounced in his favour, though this view is apparently at variance with the Rule referred to by Wightman, J., in *Dooly* v. *Great Northern Railway Co.*, (4 E. and B. 341) and the practice settled in that case.

In some measure also I was influenced by a consideration of the hardship which would often ensue to a pauper's solicitor if he is to reap no reward for his services. It frequently happens that a successful pauper is besieged by creditors, some of whom may be judgment creditors in other proceedings. If no part of the Judgment recovered by the pauper is chargeable with his solicitor's "profit" costs, the whole of the judgment becomes available for attachment at the instance of any such creditors, with the result that the solicitor is robbed of the fruits of his labours by a party or parties who never had any claim to gratuitous legal assistance.

There is, I should add, an outcome of my decision about which I entertain doubt. If costs

are to be taxed as in other cases where "profit" costs are allowed, the consequence may be as indeed it is in the present case, that the amount at which the pauper's solicitor's bill is allowed exceeds the amount of the judgment recovered. In no case could the pauper be liable to pay more than the sum recovered by him. Can his opponent be made liable therefore to pay the pauper's solicitor a larger amount? I am disposed to think that in such event the party and party costs should be allowed at whichever is the smaller figure. On this point in particular I would welcome a definite ruling.

BURTON, J.—This is a Summons to review the taxation by the Registrar of the plaintiff's bill of costs in this suit. The plaintiff was admitted to sue as a pauper and recovered judgment for the sum of $1,251.08 with costs to be taxed on the Supreme Court Scale. Mr. M. V. Pillai was assigned to the pauper by the Court and after judgment brought in his bill for taxation before the Registrar. On the taxation an objection was taken that the plaintiff was not entitled to charge the defendant with profit costs. The Registrar allowed the costs, and the defendant now appeals. The only question in this appeal is the question of principle whether the successful plaintiff is entitled to charge profit costs against the defendant.

Solicitors' fees are dealt with by Section 31 of the Advocates and Solicitors Enactment 1930 which is as follows:—

> "Whilst a person sues as a pauper no person shall take or agree to take or seek to obtain from him any fee profit or reward for the conduct of his business in the Court; and any person who takes or agrees to take or seek to obtain from him any such fee profit or reward shall be guilty of a contempt of Court."

But the Court fees are dealt with by the Civil Procedure Code. Section 453 provides that the plaintiff shall not be liable to pay any Court fee, and section 455 provides:—

> "Where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court fees.....and such amount shall be a first charge on the subject matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code,"

and Section 35 (i) of the Advocates and Solicitors Enactment says:—

> "Where costs have been awarded to be paid to a pauper, the costs allowed to his Advocate and Solicitor (if any are so allowed) shall, subject to the provisions of the Civil Procedure Code.....be a first charge upon any sums recovered by him in the action."

Sections 28, 29, 30, 31 and 34 of the Advocates and Solicitors Enactment seem to be modelled very closely upon the Rules of the Supreme Court 1883 Order XVI rules 24, 25, 26, 27 and 31. These rules were considered in *Carson* v. *Pickersgill & Sons*, 14 Q.B.D. 859 the head note of which is as follows:—

> "Under the rules of the Supreme Court 1883 Order XVI rules, 24, 25, 26, 27 and 31 a successful plaintiff in an action *in forma pauperis* tried before a judge and jury is entitled upon taxation as against the defendant to costs out of pocket only, and cannot be allowed anything for remuneration to his solicitor or fees to counsel."

I should have had no hesitation in following *Carson* v. *Pickersgill* in this case if there had not been a decision in the Straits Settlements. But in *Mahawan bin Sakjan* v. *Meera Hoosain*, 1929 S.S.L.R. 189 Stevens, J. did not follow *Carson* v. *Pickersgill* basing his reasoning on Section 775 of the Civil Procedure Code. He says at page 194:—

> "But our section 775, as I have pointed out above, provided, as the old Order XVI did not provide, for circumstances in which a pauper litigant may become liable for fees and costs; and consequently Section 774 presents to us no such difficulty as did rule 31 to the judges who decided the case of *Carson* v. *Pickersgill*."

Section 775 corresponds quite closely with our Section 35 (*i*). The reasoning of Stevens, J. seems to be based on the words in Section 775 (1) "if any are so allowed" of which he says at page 195:—

> "I confess that the wording of Section 775 (1) presents to my mind some difficulty. What is the meaning of the words 'the costs allowed to his advocate and solicitor, if any are so allowed'?
>
> "Do they mean the costs ordinarily allowed by law? If so, I do not know what is meant by the words 'if any are so allowed,' because solicitors have always, I presume, been permitted to charge for their services. Or do they mean costs to be allowed by a Judge on a special application? I am disposed to think that is what is intended; though I fail to appreciate why the operation of this Section should be limited to cases in which the pauper has been awarded costs under Section 774.
>
> "In my opinion on the construction of the provisions of our Code, a pauper to whom costs are awarded may recover such costs as an ordinary litigant may recover, namely, those which he can show himself to have paid or become liable to pay."

I have carefully considered this judgment of Stevens, J. and if this last paragraph represents his opinion, I would respectfully agree. He states previously at page 194:—

> "I am informed by the Registrar of the Court that the general practice of this Court in the past has been to tax a pauper's costs on the footing that he has paid them, *i.e.* on the same principle of "dives" costs as was formerly the practice of the Chancery Courts in England a practice to which the Judges in *Carson* v. *Pickersgill* objected as illogical and unfair.
>
> In my humble opinion that objection is unanswerable and the practice ought not to receive judicial sanction in this Court."

Now as far as I can see, the only provisions of law which can justify a departure in Johore from the principle of *Carson* v. *Pickersgill* is Section 35 (*i*) which I have set out above. But I understand the object of this Section to be merely to give the advocate and solicitor's costs a first charge on any sums received or recovered. It is clear that the Advocate and Solicitor gets his right to costs under the original award to the pauper. But by the insertion of the words "if any are so allowed" the Section contemplates that no costs may be allowed to him on taxation, and as Mr. Chidson pointed out, a case is conceivable where the Advocate and Solicitor may have incurred no out-of-pocket costs. But a case is not conceivable where no costs may be allowed on taxation, if the Advocate and Solicitor is entitled to profit costs; and unless the Legislature had in its mind that profit costs could not be charged, these words are repugnant. The words add nothing to or subtract nothing from the rights of the Advocate and Solicitor already given. But they contradict the contention that the advocate and solicitor can be awarded profit costs.

I do not think we can read more into this section than that it gives a charge. It has not the same effect as the new rule 31(c) in England, though I think the arguments of the plaintiff's solicitor would logically read more into this section even than the rights conferred by that rule.

I do not think section 34 is of any assistance. It means no more than that costs where they have been ordered, should be taxed according to the scales in force. It does not give any authority to charge under headings not otherwise justifiable.

I conclude therefore that the intention of the Legislature is that the advocate and solicitor assigned to a pauper should not have profit costs in any event. The plaintiff, as Brett, M.R. pointed out, should not be allowed to make a gift out of his pocket to his solicitor at the expense of the defendant. But I think that the strongest argument in favour of this principle is that, if it were not adopted, the profit of the advocate and solicitor assigned to a pauper would be contingent on the result of the case. The plea that a pauper plaintiff is dispaupered by judgment was negatived as long ago as *Dooly* v. *The Great Northern Railway Co.* (4 E. & B.). Party and party costs are awarded on the principle that they are intended to be an indemnity. Brett, M.R. says in *Carson* v. *Pickersgill* (*ubi sup.*) at page 868:—

> "Now the rule of taxation in actions which are not pauper actions is that the unsuccessful party is bound to pay his opponent those costs which the opponent was reasonably entitled to incur and has either paid or rendered himself liable to pay."

But a pauper has not rendered himself liable to pay his advocate and solicitor's profit costs. He did not engage the advocate and solicitor. He was assigned by the Court. There is no contract between them, and the advocate and solicitor is definitely forbidden to take or agree to take a fee from him. The rule in *Carson* v. *Pickersgill* is now adopted in England in all divisions and in the House of Lords, see the judgment of Lindley, L.J. in *Richardson* v. *Richardson*, (1895) P. at page 347.

I am of opinion therefore that the Registrar should tax the bill on the principle that no profit costs are to be allowed.

MURISON, C.J.—This is an appeal against an order of Burton, J. dated the 10th May, 1932.

The trouble in this case originates from a judgment of Thorne, J. delivered in the action on the 16th March, 1932. The Plaintiff sued as a pauper. Thorne, J. gave him judgment for $1,251.08 against the Company, and there has been no appeal against that judgment. Thorne, J. further ordered in his judgment that the plaintiff recover from the Defendants "the costs of this action to be taxed on the Supreme Court scale."

The Registrar then proceeded to tax the Plaintiff's costs. He allowed them at $2,129.08 which is a larger sum than the amount involved. The certificate is dated 16th March, 1932. In the bill were certain items under the head of "Profit costs." The Registrar, for reasons which he sets out in the grounds for his decision, was of opinion that, according to the true construction of Thorne, J.'s order as to costs, he ought to allow profit costs to be included in the bill taxed, and he allowed them.

The Defendants' solicitor then took out a summons to review the Registrar's taxation. This was heard by Burton, J. who was of opinion that profit costs could not be recovered in a pauper action. He consequently disallowed them. The formal order in this sense is dated

the 10th May, 1932 and this is the order appealed against.

The appeal raises the single question whether or not a solicitor in a pauper case can get profit costs.

A preliminary objection was taken at the hearing of the appeal upon the ground that the appeal, being concerned only with a question of costs, was not competent under section 17 (*c*) of the Johore Courts' Enactment No. 17 of 1920. That section says that no appeal shall lie " where the judgment or order relates to costs only." This provision (with the addition of the words " except with the leave of the Court or a Judge " and a limitation to costs in the Judge's discretion) corresponds to the English law contained in Section 31 (*i*) (*h*) of the Judicature Act 1925; and it has been held under that section that if an order relating to costs involves a question of law and principle, an appeal does lie (James, L.J. in *In Re the Rio Grande, etc.*, (1877) 5 C.D. at page 284).

In my opinion, therefore, the preliminary objection fails, for it is clear that a question of law and principle is involved in this appeal.

The law on the substantive question in the appeal is contained in The Advocates and Solicitors Enactment (No. 16 of 1930), sections 28 to 35.

Section 28 says that on an application to sue as a pauper the application is referred to a Solicitor who gives his opinion whether or not there is a good cause of action. Section 29 says that the solicitor can take no fee for that opinion.

Section 30 says that a solicitor who is appointed to represent a pauper in an action cannot refuse, without good reason, to act.

Section 31 says that while a person sues as a pauper he cannot agree to take or sue to obtain any fee or profit for the work he does in Court under penalty of a contempt of Court.

Then section 34 says:—

> " The Court or a Judge may order costs to be paid to a person admitted to sue as a pauper and such costs shall, unless the Court or a Judge otherwise orders, be taxed as in other cases."

So far the Johore law is practically the same as the law in England (R.S.C. Order XVI Rules 22 et seq. before the amendments in 1928 which took effect from the 6th April, 1926, see Annual Practice of 1929 p. 266). But the next Johore section has no corresponding provision in the English law. The Johore section 35 is as follows:—

> " (*i*) When costs have been awarded to be paid to a pauper, the costs allowed to his advocate and solicitor, (if any are so allowed), shall, subject to the provisions of the Civil Procedure Code in force for the time being, be a first charge upon any sums recovered by him in the action.
>
> " (*ii*) When any sum has been recovered by him, and not applied in payment of the fees of the Court referred to in the said Code, the registrar may refuse to allow any further proceedings on behalf of such pauper to be taken in such action until the sum recovered has been applied in payment of such fees."

It is contended for the appellant that the words " costs allowed to his advocate and solicitor (if any are so allowed) shall " etc. provide impliedly for an order by the Court that a fee be paid to the advocate and solicitor. Further, it is said that the word " costs," being so extended in its meaning in section 35, must be taken to be similarly extended in section 34.

The argument against this view is that legislation by implication on such a definite point as this which could easily have been expressed clearly in direct form must not be accepted if any other construction is possible. The alternative construction suggested is to read the words " costs allowed to his solicitor and advocate (if any such are allowed)" as merely equivalent to the expression " costs to be paid to a person admitted to sue as a pauper."

It is deplorable that the intention of the legislature should be wrapt up in a cloud of vagueness of this kind. Of the two difficulties I find the difficulty in accepting the alternative construction the greater. The words " costs allowed to a solicitor " are so essentially different from the words " costs to be paid to a person admitted to sue as a pauper " that I cannot resist the conviction that the legislature intended to lay down something different in section 35 from what it had laid down in section 34.

If that view is correct the only thing it can have meant is, in my opinion, that the Court could give the solicitor by definite order (" if any are so allowed ") profit costs.

In the Colony the law is the same as in Johore. It is contained in Chapter XXXVI of the Civil Procedure Code and section 775 is, in substance, the same as the Johore section 35. Construing section 775(1) Stevens, J. in *Mahawan bin Sakjan* v. *Meera Hoosain*, (1929) S.S.L.R. at pages 194-5 said:—

> " I confess that the wording of Section 775 (1) presents to my mind some difficulty. What is the meaning of the words, ' the costs allowed to his advocate and solicitor, if any are so allowed '?
>
> Do they mean the costs ordinarily allowed by law? If so, I do not know what is meant by the words ' if any are so allowed,' because solicitors have always, I presume, been permitted to charge for their services.

> Or do they mean costs to be allowed by a Judge on a special application? I am disposed to think that is what is intended; though I fail to appreciate why the operation of this section should be limited to cases in which the pauper has been awarded costs under Section 774."

He, however, expressed the opinion that the rule in *Carson* v. *Pickersgill*, (1895) 14 Q.B.D. 859 which allows counsel no remuneration in a pauper case and says that such payment is unfair and illogical, ought to be followed in the Colony. Since the learned judge decided that *Carson* v. *Pickersgill* did not apply to the Colony, I find it difficult to understand why he adopted the rule in that case. But he did adopt it, and was so impressed with it that he did not pursue his own inclination to construe the words "if any are so allowed" as meaning that the solicitor could be remunerated on a special application to the judge. With great respect I think Stevens, J. was wrong in following the rule in *Carson* v. *Pickersgill* and in not following his own inclination.

I revert now to the question what Thorne, J. in his original judgment ordered. According to the formal order and I am told that nothing further is available he merely ordered the costs to be taxed according to the Supreme Court scale. Ordinarily this would allow of the taxation of profit costs, but section 35 says (as I construe it) that there must be an order to this effect. There is no such order in Thorne, J.'s judgment.

In my opinion, therefore, the Registrar had no power to award profit costs.

I come, therefore, to the same conclusion as Burton, J. did but by an entirely different process of reasoning. He relied on *Carson* v. *Pickersgill*. That case decided that under the Rules of the Supreme Court 1883 Order XVI Rules 24, 25, 26, 27 and 31 a successful Plaintiff in an action *in forma pauperis* is entitled upon taxation as against the Defendant to costs out of pocket only and cannot be allowed anything for remuneration to his solicitor or fees to counsel. But that decision is based upon the English Rules quoted. There is, as I have said, no English rule corresponding to section 35 of the Johore Enactment which (as I construe it) allows exactly what is not, according to *Carson* v. *Pickersgill*, allowed by the English Rules. *Carson* v. *Pickersgill* therefore cannot have any application to the subject matter of this appeal.

I wish distinctly to say that in my opinion under section 35 of the Johore Advocates and Solicitors Enactment 1930 the Court or a judge has power to order profit costs by making a special order to that effect; though, if no special order is made to that effect, profit costs cannot be included in the taxation of the bill.

Further, I think that in no case can the amount at which a pauper's solicitor's bill is taxed exceed the amount of the judgment recovered.

I further wish to say that in my opinion the law should be amended in some clearly intelligible form.

Agreeing in the conclusion reached by Burton, J. I would dismiss the appeal, but I would make no order as to the costs of the appeal.

TERRELL, J.—I have had the opportunity of reading the judgment of the learned President of the Court with every word of which I respectfully agree.

The essence of the matter appears to be that the case of *Carson* v. *Pickersgill*, (1895) 14 Q.B.D. page 859, was decided under certain rules which were in effect identical with the provisions of the Advocates & Solicitors Enactment Sections 28 to 34 and the corresponding provisions of the Civil Procedure Code of the Colony except that the Johore Enactment contains a provision Section 35 and the Civil Procedure Code a similar provision in Section 775 which makes the case of *Carson* v. *Pickersgill* of doubtful authority. I agree with the principle that costs should only be awarded as an indemnity. The Court, however, has power to award the pauper's solicitor costs against his client and if that is done, there is clearly something against which the pauper can be indemnified. On this principle, in the case of *Low Soon Wah* v. *Low Peng Soey* Singapore Suit 627 of 1931, the Court of Appeal allowed the pauper appellant's solicitor a charge for his costs under Section 775 of the Civil Procedure Code and directed the respondent to pay the appellant's costs under Section 774. I was a member of that Court and I think in view of the wording of Section 775 of the Civil Procedure Code that it was only necessary to allow the pauper's solicitor his costs and not to give him a charge by the terms of the Order, the charge following automatically by virtue of the Statute. If in this case Thorne, J. had given the pauper's solicitor his costs under Section 35 of the Enactment, he would likewise have had a charge on the amount recovered. It follows that the pauper's solicitor's costs should be limited to the amount recovered and that the costs recoverable from the other side should likewise be so limited.

As Thorne, J. made no order under Section 35 I agree that the appeal should be dismissed but without costs.

Appeal dismissed.

Solicitors for the Appellant—*Pillai & Co.*

Solicitors for the Respondents—*Allen & Gledhill.*